

## AIPPI Canada “Lunch ‘n Learn” June 20, 2018, Toronto

### Obviousness – Developments in Canadian Law:

Does the notion of the “inventive concept” as recently interpreted by the Courts make it easier to invalidate patents in Canada?

#### Speakers

David Tait, *McCarthy Tétrault LLP*  
Marcus Klee, *Aitken Klee LLP*

#### Moderator

Anthony J. Prenol, *Blake, Cassels & Graydon LLP*

In the landmark *Plavix* decision of 2008 (*Apotex v Sanofi*), the Supreme Court of Canada introduced a four-part test for assessing obviousness in Canada. The analysis calls for the construction of the so-called “inventive concept” of the claim in question. The inventive concept is compared to the state of the art, and any gaps are identified in order to determine whether those gaps would have been obvious to one skilled in the art. The Supreme Court ruled that for some claims, such as those reciting a bare chemical formula, the inventive concept is not readily discernable from the claim itself and must be construed. However, the Federal Court of Appeal recently called this into question, noting that in some cases the inventive concept can be avoided altogether in favour of simply construing the claim (*CIBA v SNF*, 2017 FCA 225; and *BMS v Teva*, 2017 FCA 76). Have these rulings made it easier to invalidate a patent for obviousness? How is the “inventive concept” to be dealt with by patent professionals as a seemingly necessary tool in claim construction and patent validity?

Join us for lunch, as David and Marcus, opposing counsel in *BMS v Teva*, debate the recent decisions on the test for obviousness and discuss the implications for patent prosecution practitioners, patent litigation lawyers and their clients.

**When:** June 20, 2018, 12:00 – 2:00 pm

**Where:** McCarthy Tétrault LLP, Suite 5300, TD Bank Tower  
66 Wellington Street West, Toronto

**Cost:** \$90.00

Please RSVP by email before June 13, 2018, to Fraser Rowand at [frowand@rowandlaw.com](mailto:frowand@rowandlaw.com).

Send your payment by cheque payable to AIPPI Canada to Fraser Rowand, Suite 900 – 357 Bay St., Toronto, ON, Canada M5H 2T7 or contact Fraser by email to arrange payment by Interac e-transfer.